DOCKET NO. FSTCV-16-5016074-S : SUPERIOR COURT

DOE

SUPERIOR COURT
STAMFORD-NORWALK
JUDICIAL DISTRICT

JUDICIAL DISTRICT OF
STAMFORD/NORWALK

2019 AUG -2 P 4:36

V.

AT STAMFORD

WILTON BOARD OF EDUCATION : AUGUST 2, 2019

MEMORANDUM OF DECISION
RE: MOTION FOR SUMMARY JUDGMENT (177.00)

I. INTRODUCTION

Pursuant to Practice Book § 17-44, et seq., the defendants, Town of Wilton and Wilton Board of Education ("defendants") have moved for summary judgment as to all counts of the plaintiffs' Amended Complaint, dated February 28, 2017. Both parties have filed memoranda, supplemental memoranda and affidavits and deposition testimony in support of their respective positions. The motion was argued to the court on April 8, 2019. The defendants are entitled to summary judgment based on the doctrine of governmental immunity as follows:

1. The plaintiffs' claim the negligence claims are barred by the doctrine of governmental immunity to which no exception applies. (Counts One, Five, and Seven).

2. The plaintiff's claim for negligent hiring and negligent retention are barred by the doctrine of governmental immunity to which no exception applies. (Count Three).

3. Plaintiffs' claims for negligent infliction of emotion distress are barred by the doctrine of governmental immunity to which no exception applies, and likewise fails as a matter of law because the defendants did not owe a duty of care to Mother Doe and Father Doe. (Counts Five and Seven).

4. Plaintiffs' claims against the Town of Wilton (Two, Four, Six and Eight) should be dismissed to the extent that the Court grants summary judgment on the corresponding

177.02

claims against the Board of Education, as the claims against the Town of Wilton are derivative.

Plaintiffs claim that Boy Doe, age four and five during the years in question, was sexually abused by Eric Von Kohorn, an employee of the Miller-Driscoll School (school). The plaintiffs, Boy Doe, Father Doe, and Mother Doe, are bringing this action against the defendants, the Wilton Board of Education (WBOE) and the Town of Wilton (Wilton). Before the court is the defendants' motion for summary judgment. As discussed below, the court denies the motion in its entirety.

In their second amended complaint the plaintiffs allege the following facts. During the 2013 winter and spring school semester and the 2013-2014 school year, Boy Doe was four and five years of age and a preschool student attending the school. In January 2013, Dr. Fred Rapczynski, an employee of WBOE, received reports of disturbing conduct by Von Kohorn relating to his interactions with another preschool student (female student).[1] The female student's parents informed Dr. Rapczynski that Von Kohorn had: (1) taken her alone into a deserted school bathroom, which amounted to a violation of school policies; (2) sexually assaulted her by forcefully wiping her after she went to the bathroom even though she was toilet trained and did not require assistance; and (3) caused her visible physical injuries and irritation to her genital area. Dr. Rapczynski was aware that there were policies in place that were designed to protect students, and that those polices prohibited Von Kohorn from taking female preschool students into the bathroom alone. In response to the parents' allegations, Dr.

[1] The female student brought an action against both WBOE and Wilton, and for clarity these parties will be referred to in their individual capacities in past context, and as the defendants in the present case. Wilton and WBOE filed a motion for summary judgment in that matter as well, which was denied. *Girl Doe* v. *Wilton Board of Education*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-15-5015035-S (November 9, 2017, *Lee, J.*) (*Girl Doe*). The *Girl Doe* decision has been attached as an exhibit, in addition to testimony given in that matter. The case was eventually withdrawn after the parties settled.

Rapczynski apprised Von Kohorn of the allegations and interviewed him twice. During the first interview, Von Kohorn denied taking the female student into the bathroom, but admitted during the second interview that he had lied and had in fact taken the female student into the bathroom alone. Dr. Rapczynski reported the allegations, accompanied by the substance of the interviews with Von Kohorn, to WBOE and at least one other staff member. No further steps were taken. Dr. Rapczynski also filed multiple reports to the Department of Child and Family Services (DCF), and told the DCF that his own investigation "did not support the girl's claims," after which DCF informed Dr. Rapczynski that it would not be performing its own investigation of the allegations.

The complaint further alleges that Dr. Rapczynski and WBOE breached their nondiscretionary obligations by failing: (1) to further investigate; (2) to reach a conclusion regarding whether Von Kohorn had sexually assaulted the female student; (3) to take preventative steps regarding Von Kohorn's continued access to and work with students; (4) to evaluate whether Von Kohorn posed a threat to students after learning of the report of sexual assault before allowing him to return to interacting with the students; (5) to terminate, suspend, or otherwise discipline Von Kohorn; (5) to increase the level of supervision of Von Kohorn; (6) to properly investigate Von Kohorn's qualifications and eligibility to work with preschool students; (7) to further investigate the nature of Von Kohorn's contact with preschool students; (8) and to inform female student's parents of the report. The response from Dr. Rapczynski and WBOE was to move Von Kohorn to a different classroom, where they knew he would continue to work with other preschool students, but not have contact with the student who had reported him.

Boy Doe was a student in the class to which Von Kohorn was reassigned. The plaintiffs allege that staff members and employees, including Dr. Rapczynski, knew or should have

known that Boy Doe was an identifiable victim who faced the threat of imminent harm from contact with Von Kohorn. Starting in January 2013 and continuing through the following 2013-14 school year, Boy Doe had frequent contact with Von Kohorn. Like the female student, Boy Doe was fully toilet-trained, and despite this Von Kohorn regularly took Boy Doe in the school bathroom alone. Other school employees and authorized agents negligently permitted Von Kohorn to do this, and violated their nondiscretionary obligation to prevent him from doing so. During this time, Von Kohorn sexually exploited and injured Boy Doe by taking digital images of him while his pants were down in the bathroom. Von Kohorn took these photos with the intent to use the images for personal gratification and/or distribution. As a result of the negligence of WBOE and the staff, Boy Doe suffered serious and permanent damages, as well as extensive permanent emotional and psychological injuries arising from the exploitation he suffered. As a further result, Boy Doe has suffered and will continue to suffer significant loss in the enjoyment of his life's activities. Boy Doe has suffered and will suffer Post Traumatic Stress Disorder, loss of self-esteem, learning difficulties, sleep disturbances, fear and anxiety, adverse behavioral changes, learning difficulties and disabilities, disruption in his interactions and relationships with other people, and negative changes in the way the he currently functions and will function in the world.

The plaintiffs' amended complaint consists of eight counts. Counts one and three allege negligence against defendant WBOE on behalf of Boy Doe and Boy Doe PPA Mother Doe and Father Doe, his parents. Counts five and seven allege negligent infliction of emotional distress against defendant WBOE on behalf of Mother Doe and Father Doe, respectively. Counts two, four, six, and eight all allege that WBOE functioned as an arm or agency of Wilton, thus rendering Wilton legally responsible for any damages assessed against WBOE as a result of the plaintiffs' injuries. The defendants filed a motion for summary judgment on the entirety of the

plaintiffs' complaint. The plaintiffs filed a memorandum in opposition to the motion, to which the defendants have filed a reply brief. The defendants have also filed a second supplemental memorandum in support of their motion.

II. APPLICABLE LAW

A. Standard of Review

"The judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Practice Book § 17-49. "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way. . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party. . . . [A] directed verdict may be rendered only where, on the evidence *viewed in the light most favorable to the nonmovant*, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Dugan* v. *Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003). "[S]ummary judgment is an appropriate vehicle for raising a claim of res judicata . . . ." (Citations omitted.) *Joe's Pizza, Inc.* v. *Aetna Life & Casualty Co.*, 236 Conn. 863, 867 n.8, 675 A.2d 441 (1996). "Because res judicata or collateral estoppel, if raised, may be dispositive of a claim, summary judgment [is] the appropriate method for resolving a claim of res judicata." *Jackson* v. *R. G. Whipple, Inc.*, 225 Conn. 705, 712, 627 A.2d 374 (1993).

B. Governmental immunity

In counts one through four of the complaint, Boy Doe via his parents alleges negligence against the defendants. The defendants argue that these claims are barred because the plaintiffs have failed to allege a statute that abrogates governmental immunity, and even if the plaintiffs

do allege such a statute, the doctrine of governmental immunity bars the negligence claims because the alleged acts and omissions were discretionary rather than ministerial. In response, the plaintiffs argue that governmental immunity does not apply because the defendants violated their ministerial duties, and even if the duties are deemed to be discretionary, an exception to governmental immunity applies.[2]

The defendants first argue that the plaintiffs have failed to allege any statute abrogating governmental immunity. It is true that a municipality is immune from liability for common law negligence unless the legislature has enacted a statute that abrogates such immunity. *Williams* v. *New Haven*, 243 Conn. 763, 766-67, 707 A.2d 1251 (1998). However, in *Williams*, the court reversed the judgment of the trial court in favor of the defendant city, due to the plaintiffs' failure to cite authority for their proposition that the defendant city could be held liable in the same vein as an entity or person. Id., 769-70. However, the court finds the defendants' argument here unavailing. "[A]lthough, generally, the device used to challenge the sufficiency of the pleadings is a motion to strike; see Practice Book § 10-39; our case law [has] sanctioned the use of a motion for summary judgment to test the legal sufficiency of a pleading" if a party has waived its right to file a motion to strike by filing a responsive pleading. (Internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 535 n.10, 51 A.3d 367 (2012). "[T]he use of a motion for summary judgment to challenge the legal sufficiency of a complaint is appropriate when the complaint fails to set forth a cause of action and the defendant can establish that the defect could not be cured by repleading. . . . [The Supreme

[2] In their objection to the defendants' motion for summary judgment, the plaintiffs argue that *Girl Doe* should have a binding preclusive effect on issues relating to the defendants' violation of the school toileting protocol. However, the court in *Girl Doe* merely held that the distinction between discretionary and ministerial should survive summary judgment and be put to the fact-finder. Since that decision, new precedent has emerged that holds that it is for the court to make that determination when there is an absence of material fact. See *Ventura* v. *Town of East Haven*, 330 Conn. 613, 199 A.3d 1 (2019). Thus, the plaintiffs' argument is unavailing.

Court] has recognized that there are competing concerns at issue when considering the propriety of using a motion for summary judgment for such a purpose. On the one hand, [i]f it is clear on the face of the complaint that it is legally insufficient and that an opportunity to amend it would not [cure that insufficiency], we can perceive no reason why [a] defendant should be prohibited from claiming that he is entitled to judgment as a matter of law and from invoking the only available procedure for raising such a claim after the pleadings are closed. . . . It is incumbent on a plaintiff to allege some recognizable cause of action in his complaint. . . . Thus, failure by [a defendant] to [strike] any portion of the . . . complaint does not prevent [that defendant] from claiming that the [plaintiff] had no cause of action and that [summary judgment was] warranted. . . . [Indeed], [the Supreme Court] repeatedly has recognized that the desire for judicial efficiency inherent in the summary judgment procedure would be frustrated if parties were forced to try a case where there was no real issue to be tried. . . . On the other hand, the use of a motion for summary judgment instead of a motion to strike may be unfair to the nonmoving party because [t]he granting of a defendant's motion for summary judgment puts [a] plaintiff out of court . . . [while the] granting of a motion to strike allows [a] plaintiff to replead his or her case." (Citations omitted; internal quotation marks omitted.) *Ferri* v. *Powell-Ferri*, 317 Conn. 223, 236-37, 116 A.3d 297 (2015). Here, the plaintiffs are alleging that governmental immunity does not apply, and in the event it does, they are arguing that an exception applies. The defendants' argument is off base, and thus, the motion is denied as to this argument.

The defendants next argue that even if the plaintiffs properly alleged a statute abrogating governmental immunity, the doctrine of governmental immunity will still serve to bar the negligence claims. General Statutes § 52-557n (a) (2) (B) provides in relevant part that a political subdivision of the state shall not be held liable for damages caused by "negligent acts or omissions which require the exercise of judgment or discretion as an official function of the

authority expressly or impliedly granted by law." "The hallmark of a discretionary act is that it requires the exercise of judgment. . . . In contrast, [m]inisterial refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion." (Internal quotation marks omitted.) *Coe* v. *Board of Education*, 301 Conn. 112, 118, 19 A.3d 650 (2011). "Generally, evidence of ministerial duty is provided by an explicit statutory provision, town charter, rule, ordinance or some other written directive. . . . Testimony of a municipal official, however, may provide an evidentiary basis from which a jury could find the existence of a specific duty or administrative directive." (Citation omitted.) *Wisniewski* v. *Darien*, 135 Conn. App. 364, 374, 42 A.3d 436 (2012).

The defendants assert that adhering to the policy is discretionary, rather than ministerial. This policy and issue have already been examined by this court in *Girl Doe* v. *Wilton Board of Education, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-15-5015035-S (November 9, 2017, Lee, J.)*, the facts of which were outlined within the background section of this opinion. There, WBOE and Wilton argued that the acts and omissions relating to the policy were discretionary, and even if immunity was not applicable, there was no evidence that the defendant board and town breached any duty owed to the female student. Id. WBOE and Wilton characterized the enforcement of the policy as an obligation in their moving papers for summary judgment, and subsequently referred to the duty to adhere to and enforce the policy as a ministerial duty in their reply. Id. Various staff members also gave testimony that the duty to follow the policy was an obligation. "Testimony of a municipal official . . . may provide an evidentiary basis from which a jury could find the existence of a specific duty or administrative directive." Id., quoting *Wisniewski* v. *Darien*, supra, 135 Conn. App. 374. WBOE and Wilton cited precedent which establishes that the duty to supervise school children is often characterized as a discretionary governmental duty, as opposed to a ministerial one. *Girl Doe*,

supra, citing *Heigl* v. *Board of Education*, 218 Conn. 1, 8, 587 A.2d 423 (1991). The court ultimately held that the question of whether WBOE and Wilton's actions constituted a discretionary or ministerial duty was a question for the jury to decide, and denied summary judgment.

Since the *Girl Doe* decision, our Supreme Court has addressed the court's responsibility to rule on the distinction between a discretionary and ministerial obligation. In *Ventura* v. *East Haven*, 330 Conn. 613, 199 A.3d 1 (2019), the court held clearly that "[b]ecause the construction of any such provision, including a municipal rule or regulation, presents a question of law for the court . . . whether the provision creates a ministerial duty gives rise to a legal issue subject to plenary review on appeal. Thus . . . the ultimate determination of whether . . . immunity applies is ordinarily a question of law for the court . . . unless there are unresolved factual issues material to the applicability of the defense . . . in which case resolution of those factual issues is properly left to the jury." (Citations omitted; internal quotation marks omitted.) Id., 631-32. As such, the plaintiffs' contention that the determination of whether a duty is discretionary or ministerial is a question of fact and thus a jury determination is now incorrect. It is within this court's purview to determine the duty's characterization.

However, the court finds there is no reason to decide this issue in the present case. As discussed below, even if it was determined that the actions were discretionary in nature, the plaintiffs satisfy the requirements of the identifiable person-imminent harm exception to discretionary governmental immunity. Schools have an established duty to ensure students are protected from imminent harm. See *Haynes* v. *Middletown*, 314 Conn. 303, 101 A.3d 249 (2014). The identifiable victim exception to discretionary act immunity has three requirements: (1) an identifiable victim; (2) an imminent harm; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to harm. Id., 312-13. "[T]he criteria of

'identifiable person' and 'imminent harm' must be evaluated with reference to each other. An allegedly identifiable person must be identifiable as a potential victim of a specific imminent harm. Likewise, the alleged imminent harm must be imminent in terms of its impact on a specific identifiable person." *Doe* v. *Petersen*, 279 Conn. 607, 620–21, 903 A.2d 191 (2006).

Boy Doe is clearly an identifiable victim. Courts have recognized schoolchildren attending public schools during school hours as an identifiable class of foreseeable victims because "they were intended to be the beneficiaries of particular duties of care imposed by law on school officials; they are legally required to attend school rather than being there voluntarily; their parents are thus statutorily required to relinquish their custody to those officials during those hours; and, as a matter of policy, they traditionally require special consideration in the face of dangerous conditions." (Internal quotation marks omitted.) *Strycharz* v. *Cady*, 323 Conn. 548, 576, 148 A.3d 1011 (2016), overruled on other grounds by *Ventura* v. *Town of East Haven*, supra, 330 Conn. 613. Boy Doe is within this class, and was on school property when the pertinent actions took place. Thus, the first requirement is met.

The second element of the identifiable victim exception to governmental immunity, i. e., a finding of imminent harm, while less clear, is also satisfied. The Supreme Court has clarified that imminent harm is found "only in the clearest cases." *Cotto* v. *Board of Education*, 294 Conn. 265, 276, 984 A.2d 58 (2009). However, the court concludes that Boy Doe was in imminent harm. Multiple school officials gave testimony in *Girl Doe* and admitted that when Von Kohorn took the female student into the bathroom, alone, the situation posed an imminent threat to her well-being. If anything, the situation of harm in the present case is more imminent due to the staff's knowledge of the prior instance with Von Kohorn and the female student. The defendants argue that the immanency of harm in this instance cannot be established because Von Kohorn's alleged exploitive photographing of Boy Doe was not certain to happen

immediately, if at all. The court disagrees. The proper standard is "whether it was apparent to the municipal defendant that the dangerous condition was so likely to cause harm that the defendant had a clear and unequivocal duty to act immediately to prevent the harm." *Brooks* v. *Powers*, 328 Conn. 256, 266, 178 A.3d 366 (2018). Given Von Kohorn's recent history, it should have been apparent that taking Boy Doe, alone, into a bathroom, just like the female student, placed Boy Doe at risk of imminent harm.

The third requirement of the identifiable victim exception is also satisfied under the facts of this case. The defendants argue that the evidence fails to establish that any agent or employee of the defendant was aware of Von Kohorn's alleged conduct, and rely upon *Doe* v. *Board of Education*, 76 Conn. App. 296, 819 A.2d 289 (2003) in support of their argument. In that case, the plaintiff argued the defendant failed to provide a safe educational environment for students, specifically, by not providing sufficient a quantity of hall monitors, by not implementing a system preventing students from roaming the halls unsupervised, by not taking steps to provide for adequate supervision of students with known disciplinary problems, and by not securing vacant rooms so that they could not be used for illicit purposes. Id., 296. Following the Appellate Court's conclusion that the defendant was entitled to governmental immunity and granting of the defendant's motion to strike, the plaintiff appealed and argued that governmental immunity was inapplicable. Upon review, the court held that the facts alleged in the complaint were not sufficient to establish that it was apparent to the defendant that a failure to act would be likely to subject the students to imminent harm, and affirmed the judgment. Id., 305-06.

While the above analysis provides an instructive explanation of the application of the doctrine of governmental immunity, particularly in settings involving minors, the present case can be distinguished from *Doe* v. *Board of Education* by the fact that an extremely similar situation, *Girl Doe,* had recently occurred in the same community. "[T]he plaintiff must show

that the circumstances would have made the government agent aware that his or her acts or omissions would likely have subjected the victim to imminent harm. . . . This is an objective test pursuant to which we consider the information available to the government agent at the time of her discretionary act or omission. . . . We do not consider what the government agent could have discovered after engaging in additional inquiry." (Citations omitted; internal quotation marks omitted.) *Edgerton* v. *Clinton*, 311 Conn. 217, 231, 86 A.3d 437 (2014). Given Von Kohorn's history with the female student in *Girl Doe*, there is an evidentiary basis from which it can be concluded that Dr. Rapczynski, and thus the defendants, were sufficiently apprised that their acts and omissions could result in a repeat occurrence with Von Kohorn and a different student.

C. Negligent Hiring and Retention

The plaintiffs argue that the defendants violated its ministerial duty when they failed to check Von Kohorn's references before hiring him, as required by policy. The defendants respond with the argument that there is no city rule, policy, or regulation that dictates the manner in which potential employees are to be vetted, and thus the act was discretionary. "A common-law claim in negligent hiring exists in any situation where a third party is injured by an employer's own negligence in failing to select an employee fit or competent to perform the services of employment." (Internal quotation marks omitted.) *Seda* v. *Maxim Healthcare Services*, Superior Court, judicial district of Hartford, Docket No. CV-07-5010811 (April 8, 2008, *Elgo, J.*). "[A]n employer may be held liable for the negligent supervision of employees." (Internal quotation marks omitted.) *Hearn* v. *Yale-New Haven Hospital*, Superior Court, judicial district of New Haven, Docket No. CV-02-0466339 (April 2, 2007, *Licari, J.*). "The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. . . . Duty is a legal conclusion about relationships between individuals, made after the fact, and is imperative to a negligence cause of action. . . . Thus,

there can be no actionable negligence . . . unless there exists a cognizable of care. . . . The test for the existence of a legal duty entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case." (Internal quotation marks omitted.) *Mazurek* v. *Great American Ins. Co.*, 284 Conn. 16, 29, 930 A.2d 682 (2007). "In any determination of whether even a special relationship should be held to give rise to a duty to exercise care to avoid harm to a third person, foreseeability plays an important role." (Internal quotation marks omitted.) *Seguro* v. *Cummiskey,* 82 Conn.App. 186, 193, 844 A.2d 224 (2004). "Our Superior Court has interpreted this foreseeability requirement as one in which the employer knew or should have known of the employee's propensity to engage in the alleged harmful conduct." (Internal quotation marks omitted.) *Seda* v. *Maxim Healthcare Services,* supra. "Whether the claim is for negligent hiring, negligent supervision or negligent retention, a plaintiff must allege facts that support the element of foreseeability." Id.

As this court has determined based on the above analysis, the identifiable plaintiff-imminent harm exception to discretionary governmental immunity applies here. Thus, the defendants are not shielded from the negligent hiring and retention claims. The motion for summary judgment is denied with respect to these claims.

D. Emotional distress

In the present case, the plaintiffs' negligent infliction of emotional distress claim is predicated on the defendant's decision to assign Von Kohorn to Boy Doe's classroom. It is the plaintiffs' contention that the defendants had a nondiscretionary obligation to remove Von Kohorn from contact with preschool students. The defendant argues first that the claims are

barred by the doctrine of governmental immunity and, further, that the defendant did not breach any duty owed to Mother and Father Doe. To establish a claim of negligent infliction of emotional distress, the following elements must be proved: "(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." *Carroll* v. *Allstate Ins.* Co., 262 Conn 433, 444, 815 A.2d 119 (2003).

In *Girl Doe*, the court applied principles of statutory construction and interpretation to determine that the WBOE and Wilton owed a ministerial duty to notify the parents of *Girl Doe* when the second report was made to DCF. *Girl Doe*, supra. Thus, WBOE and Wilton were not entitled to governmental immunity. Id. Although the circumstances in the present case are different, the court viewing the evidence in its entirety and in the light most favorable to the nonmovants, concludes that the plaintiff's claims meet the threshold test to survive a motion for judgment. "[T]he test for the existence of a legal duty of care entails: (1) a determination of whether an ordinary person in defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case. . . . The first part of the test invokes the question of foreseeability, and the second part invokes the question of policy." (Internal quotation marks omitted.) *Neuhaus* v. *DeCholnoky*, 280 Conn. 190, 217-18, 905 A.2d 1135 (2006).

The defendants challenge the existence of a duty owed to Mother Doe and Father Doe and rely upon *Giard* v. *Town of Putnam*, Superior Court, judicial district of Windham, Docket No. CV-08-5002754-S (December 3, 2008, *Booth, J.*), where the Superior Court granted the

defendant's motion to strike on the basis that the parent plaintiffs there failed to allege that the defendant was under any duty to act toward students' parents in a certain way. Id. That is not the case here, as Mother and Father Doe have alleged that the defendants had a nondiscretionary obligation and duty. Further, in *Girl Doe*, the Superior Court concluded that the defendants owed the parents a direct duty. *Girl Doe*, supra. "[The] defendants assert only in a conclusory statement that the plaintiffs cannot establish the elements of their claim. They present no evidence to support their motion with respect to the claim for negligent infliction of emotional distress, and the complaint alleges the necessary elements of the tort. The defendants have therefore failed to demonstrate that they are entitled to judgment as a matter of law on the negligent infliction of emotional distress claims." *Girl Doe*, supra. Similarly, this court having weighed the evidence in the light most favorable to the nonmovant, concludes that the defendants conclusory claim that the plaintiffs cannot establish the elements of a claim for emotional distress is insufficient to entitle them to summary judgment.

CONCLUSION

Applying the required standard for a decision on a motion for summary judgment to the facts and arguments presented in this case, the court concludes that the claims of the plaintiffs are sufficient to raise material issues of fact and therefore, the defendants are not entitled to summary judgment on the second amended complaint. The defendants' motion for summary judgment is denied in its entirety. It is so ordered.

DECISION ENTERED IN ACCORDANCE WITH THE FOREGOING ON 8/2/19
JD NO SENT ON 8/2/19

Sommer, J.
SOMMER, J.

DEPUTY CHIEF CLERK